

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SALZGITTER MANNESMANN
INTERNATIONAL (USA) INC.,

Plaintiff,

V.

Civil Action No.: 2:07cv764-MHT

SOUTHEASTERN STUD &
COMPONENTS, INC.,

Defendant.

ORDER ON PRETRIAL HEARING

A pretrial hearing was held in this case on May 19, 2008, wherein the following proceedings were held and actions taken:

1. PARTIES AND TRIAL COUNSEL:

COUNSEL APPEARING AT PRETRIAL HEARING: Appearing for Plaintiff, Salzgitter Mannesmann International (USA) Inc. was J. Forrest Hinton and appearing for Defendant Southeastern Stud & Components, Inc. was Von G. Memory.

2. JURISDICTION AND VENUE: This Court has subject matter jurisdiction over this action pursuant to, *inter alia*, 28 U.S.C. § 1332, as the matter in

controversy—open account and breach of contract related to purchase orders for steel and steel products—exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendant Southeastern Stud resides in this district and is subject to personal jurisdiction here.

3. PLEADINGS: The following pleadings and amendments were allowed:

- (a) Verified Complaint filed August 27, 2007 (Doc. No. 1);
- (b) Amended Complaint filed September 12, 2007 (Doc. No. 6);
- (c) Answer to Amended Complaint filed October 1, 2007

(Doc. No. 8);

Plaintiff's Motion for Summary Judgment (Doc. No. 24) and Defendant's Motion to Compel Arbitration are currently before the Court.

4. CONTENTIONS OF THE PARTIES:

- (a) CONTENTIONS OF PLAINTIFF SALZGITTER
MANNESMANN INTERNATIONAL (USA) INC.

The Plaintiff contends that Defendant entered into contracts with Plaintiff for the purchase of steel coils. The contracts at issue in this case are evidenced by Defendant's Purchase Orders Nos. sd-012306, 1414, and 1496. For each of these purchase orders, Defendant received a written order confirmation. Plaintiff then acquired the quantity of steel in each order and had it delivered to New Orleans, Louisiana, where Plaintiff warehoused it. Upon request from Defendant, steel was delivered in the amount requested, whereupon an invoice was issued for the steel accepted by Defendant. Defendant breached the contracts by failing to pay for steel delivered to and accepted by Defendant.

24446, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. sd-012306. The total amount of Invoice No. 24446 was \$80,848.35. Southeastern Stud has paid only \$46,387.91 towards Invoice No. 24446, leaving a balance due of \$34,460.44.

On or about December 29, 2006, as evidenced by Invoice No. 24605, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1414. The total amount of Invoice No. 24605 was \$91,098.82. Southeastern Stud has paid only \$20,000.00 towards Invoice No. 24605, leaving a balance due of \$71,098.82.

On or about January 5, 2007, as evidenced by Invoice No. 24646, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1414. The total amount of Invoice No. 24646 was \$328,271.23. Southeastern Stud has not paid any amounts towards Invoice No. 24646, leaving a balance due of \$328,271.23.

On or about January 5, 2007, as evidenced by Invoice No. 24648, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1496. The total amount of Invoice No. 24648 was \$147,864.17. Southeastern Stud has not paid any amounts towards Invoice No. 24648, leaving a balance due of \$147,864.17.

On or about January 12, 2007, as evidenced by Invoice No. 24677, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1496. The total amount of Invoice No. 24677 was \$77,613.83. Southeastern Stud has not paid any amounts towards Invoice No. 24677, leaving a balance due of \$77,613.83.

On or about February 8, 2007, as evidenced by Invoice No. 24840, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1414. The total amount of Invoice No. 24840 was \$15,146.73. Southeastern Stud has not paid any amounts towards Invoice No. 24840, leaving a balance due of \$15,146.73.

On or about April 30, 2007, as evidenced by Invoice No. 25501, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. sd-012306. The total amount of Invoice No. 25501 was \$10,148.97. Southeastern Stud has not paid any amounts towards Invoice No. 25501, leaving a balance due of \$10,148.97.

On or about May 8, 2007, as evidenced by Invoice No. 25549, Salzgitter delivered additional steel to Southeastern Stud. The total amount of Invoice No. 25549 was \$16,238.88. Southeastern Stud has not paid any amounts towards Invoice No. 25549, leaving a balance due of \$16,238.88.

Plaintiff was damaged by Defendant's breach, and is entitled to recover the purchase price of the accepted steel. The total unpaid balance is **\$699,334.78**.

The parties' agreement, furthermore, as evidenced by the terms and conditions expressed in each invoice, provides that Plaintiff is entitled to interest on the outstanding balance at the rate of prime plus two percent, as well as attorneys' fees

and costs associated with enforcing its rights against Defendant.

(b) CONTENTIONS OF DEFENDANT SOUTHEASTERN_STUD & COMPONENTS, INC.

Southeastern Stud & Components, Inc. is a manufacturer and assembler of steel components used in construction. The facilities of Southeastern Stud & Components, Inc. are located off the Selma Highway (HWY 80) in an industrial park, across the street from the Big Lots warehouse.

Salzgitter distributes steel and its principal place of business is in Houston, Texas. The steel is manufactured by third-party steel mills.

In 2003, the parties entered into a series of contracts to supply Southeastern steel coil for a job in New Orleans, Louisiana.

From December 2005 until July 2006, Southeastern made five separate purchases from Salzgitter, as represented by purchase orders numbered: 12905-1, 012306-1, 1357, 1414, and 1496.

The steel from these purchase orders was intended for production of steel framing studs and ultimate use in commercial construction contracts.

The five Salzgitter orders noted above were originally requested for delivery and specific sequencing, on average, 6-8 weeks apart.

The quantity and dollar value of each order was specifically planned to be approximately the same so that each order would be paid for and processed by Southeastern by the time the next order arrived.

Southeastern paid for delivery by drawing against a one million dollar line of credit (\$1,000,000.00).

Further, the sequenced timing of the deliveries would insure a smooth production flow and provide proper timing to the end users.

Under purchase order 12905-1, placed December 9, 2005, Southeastern ordered 1,983,000 pounds of steel, with a requested delivery date of April 1,2-6. The steel was delivered 31 days late, May 2, 2006.

Under purchase order 012306-1, placed January 23, 2006, Southeastern ordered 1,874,000 pounds of steel, with a requested delivery date of May 1, 2006. Of the total order, 555,000 pounds of the steel was delivered 92 days late, August 1, 2006; 929,000 pounds of steel was delivered 143 days late, September 21, 2006, and the remaining 373,000 was delivered 183 days late, October 31, 2006

Under purchase order 1357, placed April 18, 2006, Southeastern ordered 1,874,000 pounds of steel, with a requested delivery date of July 31, 2006. The steel was delivered 49 days late, September 18, 2006

Under purchase order 1414, placed May 11, 2006, Southeastern ordered 1,653,000 pounds of steel, with a requested delivery date of September 15, 2006. The steel, to include an additional 44,000 pounds, was delivered 5 days late, September 20, 2006

Under purchase order 1496, placed July 13, 2006, Southeastern ordered 1,764,000 pounds of steel, with a requested delivery date of November 15, 2006. The steel was delivered 32 days early, October 14, 2006.

Salzgitter performed all aspects of the contract except the expected delivery date.

The net result was that in a space of less than 90 days Salzgitter delivered, to the port of New Orleans, approximately \$2,500,000.00 of product on an allowed line of credit of approximately \$1,000[,0]00.00.

Moreover, the referenced shipments came at a time when the building market had virtually collapsed and orders and shipments were significantly reduced to customers or end users by Southeastern

5. STIPULATIONS BY AND BETWEEN THE PARTIES:
FACTS:

1. Salzgitter is a steel distributor with its headquarters and principal place of business in Houston, Texas.

2. Southeastern Stud is a manufacturer and assembler of steel components used in construction. The facilities of Southeastern Steel are located off the Selma Highway (Hwy 80) in an industrial park, across the street from the Big Lots warehouse.

3. Beginning in 2003, Southeastern Stud and Salzgitter entered into a series of steel-supply contracts for galvanized steel coils to be delivered to Port of New Orleans, Louisiana.

4. On or about January 24, 2006, Southeastern Stud sent Salzgitter Purchase Order No. sd-012306.

5. On or about February 6, 2006, Salzgitter sent Southeastern Stud a written Order Confirmation of Purchase Order No. sd-012306.

6. Salzgitter arranged for the overseas purchase of the steel ordered by Southeastern Stud, and its delivery to New Orleans. In early October, 2006, this steel

arrived in New Orleans. Southeastern Stud took delivery of some steel in this shipment.

7. On or about May 11, 2006, Southeastern Stud sent Salzgitter Purchase Order No. 1414.

8. On or about May 23, 2006, Salzgitter sent Southeastern Stud a written Order Confirmation of Purchase Order No. 1414

9. Salzgitter arranged for the overseas purchase of the steel ordered by Southeastern Stud. On or around September 9, 2006, this steel arrived in New Orleans. Southeastern Stud took delivery of some steel from this shipment.

10. On or about July 13, 2006, Southeastern Stud sent Salzgitter Purchase Order No. 1496.

11. On or about August 15, 2006, Salzgitter sent Southeastern Stud a written Order Confirmation of Purchase Order No. 1496.

12. Salzgitter arranged for the overseas purchase of the steel ordered by Southeastern Stud, and its delivery to New Orleans. In November, 2006, the steel arrived in New Orleans. Southeastern Stud took delivery of some steel in this shipment.

13. On or about December 15, 2006, as evidenced by Invoice No. 24446, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. sd-012306. The total amount of Invoice No. 24446 was \$80,848.35.

14. On or about December 29, 2006, as evidenced by Invoice No. 24605, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1414. The total amount of Invoice No. 24605 was \$91,098.82.

15. On or about January 5, 2007, as evidenced by Invoice No. 24646, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1414. The total amount of Invoice No. 24646 was \$328,271.23.

16. On or about January 5, 2007, as evidenced by Invoice No. 24648, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1496. The total amount of Invoice No. 24648 was \$147,864.17.

17. On or about January 12, 2007, as evidenced by Invoice No. 24677, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1496. The total amount of Invoice No. 24677 was \$77,613.83.

18. On or about February 8, 2007, as evidenced by Invoice No. 24840, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. 1414. The total amount of Invoice No. 24840 was \$15,146.73.

19. On or about April 30, 2007, as evidenced by Invoice No. 25501, Salzgitter delivered steel to Southeastern Stud from Purchase Order No. sd-012306. The total amount of Invoice No. 25501 was \$10,148.97.

20. On or about May 8, 2007, as evidenced by Invoice No. 25549, Salzgitter delivered additional steel to Southeastern Stud. The total amount of Invoice No. 25549 was \$16,238.88.

21. The Invoices, by their Terms and Conditions, provide that Salzgitter is entitled to interest on the outstanding balance at the rate of prime plus two percent.

22. On January 29, 2007, Salzgitter sent Southeastern Stud Invoice No. DN2476, for \$4,590.32, representing interest charges accrued against the unpaid invoice amounts to that date.

DOCUMENTS:

The following documents are deemed authentic and admissible:

1. Purchase Order No. 1357 dated April 16, 2006;
2. Written Order Confirmation for purchase Order No. 1357 dated May 4, 2006;
3. Purchase Order No. sd-012306-1 (also referenced as sd-12306 or 012306-1) dated January 24, 2006;
4. Written Order Confirmation for Purchase Order No. sd-012-012306 dated February 6, 2006;
5. Purchase Order No. 1414 dated May 11, 2006;
6. Written Order Confirmation for Purchase Order No. 1414 dated May 23, 2006;
7. Purchase Order No. 1496 dated July 13, 2006;
8. Written Order Confirmation for Purchase Order No. 1496 dated August 15, 2006;
9. Invoice No. 24446 dated December 15, 2006 in the amount of \$80,848.35 related to Purchase Order No. 012306-1;
10. Invoice No. 24605 dated December 29, 2006 in the amount of \$91,098.82 related to Purchase Order No. 1414;
11. Invoice No. 24646 dated January 5, 2007 in the amount of \$328,271.23 related to Purchase Order No. 1414;
12. Invoice No. 24648 dated January 5, 2007 in the amount of \$147,864.17 related to Purchase Order No. 1496;
13. Invoice No. 24677 dated January 12, 2007 in the amount of \$77,613.83 related to Purchase Order No. 1496;
14. Invoice No. 24840 dated February 8, 2007 in the amount of \$15,146.73 related to Purchase Order No. 1414;
15. Invoice No. 25501 dated April 30, 2007 in the amount of \$10,148.97 related to Purchase Order No. sd-12306;
16. Invoice No. 25549 dated May 8, 2007 in the amount of \$16,238.88

related to Purchase Order No. 1496;

17. Invoice No. DN24764 dated January 29, 2007 in the amount of \$4,590.32 related to Purchase Order No. 1357.

It is ORDERED that:

(1) The non-jury trial of this cause, which is to last two days, is set for September 8, 2008, at 10:00 a.m. at the Frank M. Johnson, Jr. United States Courthouse Complex, Courtroom 2FMJ, One Church Street, Montgomery, Alabama.

(2) A trial docket will be mailed to counsel for each party approximately two weeks prior to the start of the trial term;

(3) The plaintiff is required to file proposed findings of fact and conclusions of law by August 8, 2008. The defendant is required to file proposed findings of fact and conclusions of law by August 22, 2008. The parties are also directed to e:mail their proposed findings of fact and conclusions of law to <propord_thompson@almd.uscourts.gov> in WordPerfect format by the dates specified above;

(4) Each party shall have available at the time of trial, for use by the court (the judge, the courtroom deputy clerk, and the law clerk), three copies of the exhibit list and a sufficient number of copies of each photostatically reproducible exhibit for opposing counsel, the courtroom deputy clerk, the law clerk, and the judge to each have a set of the exhibits;

(5) All deadlines not otherwise affected by this order will remain as set forth in the uniform scheduling order (Doc. No. 22) entered by the court on January 23, 2007;

(6) All understandings, agreements, deadlines, and stipulations contained in this pretrial order shall be binding on all parties unless this order be hereafter modified by Order of the court.

DONE, this the 20th day of May, 2008.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE